

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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JUAN FRANCO and ARACELY FERIA,
Plaintiffs,
v.
COUNTRYWIDE HOME LOANS, et al.,
Defendants.

Case No. 2:09-cv-02280-MMD-GWF

ORDER

Before the Court is Defendants' Motion to Strike Plaintiffs' First Amended Complaint (dkt. no. 27) and Plaintiffs' Motion to Reopen Case and Lift Stay and Motion for Leave to Amend Nunc Pro Tunc to June 23, 2013 ("Motion to Amend") (dkt. no. 28).


This case has been stayed since March 2, 2011, because Plaintiff Aracely Feria initiated a Chapter 7 bankruptcy petition and identified the property at issue in this case as her assets. (See dkt. no. 21.) On May 8, 2012, the Court ordered that this case be administratively closed in light of the stay but that the matter may be reopened upon motion from counsel if needed. (Dkt. no. 24.) Over a year later, on June 23, 2013, Plaintiffs filed an Amended Complaint without seeking leave of Court.

Defendants' Motion requests that the Court strike the Amended Complaint as improper because Plaintiffs have not sought leave to reopen the case. The Court agrees. Plaintiffs should have sought leave to reopen the case. Plaintiffs are also required to seek leave to amend their complaint. See Fed. R. Civ. P. 15(a)(2).

1 In their Motion to Amend, Plaintiffs seek leave to file an Amended Complaint
2 nunc pro tunc to June 23, 2013, offering judicial economy as a reason. However, the
3 Amended Complaint was filed in violation of Federal Rule of Civil Procedure 15(a)(2).
4 Permitting Plaintiffs to violate the procedural rules would only undermine judicial
5 economy. Nevertheless, because "the court should freely give leave [to amend] when
6 justice so requires," Fed. R. Civ. P. 15(a)(2), and this case was in its initial phase when
7 it was stayed, the Court will grant leave to amend. Plaintiffs are permitted to file their
8 proposed Amended Complaint, but must do so within five (5) days.

9 It is therefore ordered that Defendants' Motion to Strike Plaintiffs' First Amended
10 Complaint (dkt. no. 27) is granted. It is further ordered that Plaintiffs' Motion to Reopen
11 Case and Lift Stay and Motion for Leave to Amend Nunc Pro Tunc to June 23, 2013
12 (dkt. no. 28) is granted in part and denied in part. Plaintiffs are given leave to file their
13 proposed Amended Complaint within five (5) days from the entry of this Order.

14 DATED THIS 11th day of December 2013.

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17 MIRANDA M. DU
18 UNITED STATES DISTRICT JUDGE
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